

### **REMARKS/ARGUMENTS**

Reconsideration of this application is requested. Claims 1-16 will remain active in the application subsequent to entry of this Amendment.

#### **Discussion of Amendments to the Claims**

The claims have been amended in order to more particularly point out and distinctly claim that which applicants regard as their invention, to direct them to preferred aspects of the disclosure and to respond to the claim clarity rejection directed to claim 3 at the bottom of page 2 of the current Official Action.

Independent claims 1 and 9 have been amended to employ "consists of" terminology, applicant noting the examiner's comments in the second full paragraph of page 5 of the Official Action. As a consequence of these amendments claims 4 and 13, which include an adsorbant, have each been rewritten in independent format. The significance of these amendments will be apparent from the remarks that follow and claim 13 has been clarified to respond to the examiner's rejection.

#### **Response to Prior Art-Based Rejections**

The Official Action contains three rejections based upon alleged anticipation. These rejections are no longer pertinent having regard to the amendments made to all four of the now independent claims as each of the applied references requires the presence of essential components excluded by the claims now under review.

To anticipate a claim, a single reference must disclose the claimed invention with sufficient clarity to prove its existence in the prior art. *Motorola Inc. v. Interdigital Technology Corp.*, 43 USPQ2d 1481, 1490 (Fed. Cir. 1997). Anticipation rejections are only proper when the "claimed subject matter is identically disclosed or described in 'the prior art,' without *any* need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the cited reference." *In re Arkley*, 172 USPQ 524, 526 (CCPA 1972); *see also Akzo N.V. v. International Trade Commission*, 1 USPQ 2d 1241, 1246 (Fed. Cir. 1986); *Ex parte Lee*, 31 USPQ 2d 1105, 1108 (BPAI 1993). Every element of the challenged claim must be disclosed within this single reference. *PPG Industries Inc. v. Guardian Industries Corp.*, 37 USPQ2d 1618, 1624 (Fed. Cir. 1996). Absence from the reference of any claimed element negates anticipation *Kloster Speedsteel AB v. Crucible Inc.* 23 USPQ 160 (Fed. Cir. 1986).

Thus, applicants' claims are patentable over each of the cited references since they each fail to disclose each element of applicants' claims. A systematic defect of the current Official Action is that the claims are not properly examined – claims 1-8 are directed to a method of stabilizing an ascorbyl (poly) phosphate **against degradation by phosphatases**. None of the documents identified and discussed in the current Official Action discusses the possibility of protecting against degradation by phosphatases or even acknowledges that phosphatases exist in compositions of the type of concern to the present application.

As an illustration of this point Miyota et al WO 03/086299 describes an already stabilized vitamin C preparation (*see* page 2, third paragraph) and discloses that the stabilized vitamin C preparation has a reduced chance of contacting with water when oily slurry is used thereby reducing the chance of decomposition due to hydrolysis, or at least minimizing it. There is no disclosure or suggestion of possible stabilization of against degradation by phosphatases in this disclosure.

The Ogata reference JP-106181695, is a machine translation which is difficult to fully understand. In any event, considering the examiner's comment in the second full paragraph of page 5 of the Official Action, by amending the claims to employ "consisting of" terminology this reference is no longer pertinent.

The Alexis et al (1999) publication relates to a comparative study on the availability of different ascorbic acid forms to fish and the difference in response of tissues to ascorbate feeding. It also discloses that phosphate esters of ascorbic acid have been found to be more stable than the acid form notably on page 448-449, part 2.1, the passage referred to in the current Official Action. Applicants see no connection between this document to a method of further stabilizing ascorbyl (poly) phosphate against degradation by phosphatases as claimed in the present invention. Indeed, degradation by phosphatases is not a subject of this publication.

The Official Action also includes an "obviousness" rejection based upon U.S. patent 5,229,147 to Kubota et al in combination with the Alexis publication mentioned above.

The Kubota patent is quite clear that the compositions described in this document must contain vitamin E. As an example, *see* the Abstract, line 5, the discussion of vitamin E in column 2, lines 57-62, the content of vitamin E in the coating material in the paragraph bridging columns 3-4 of the reference, and in particular the required presence of vitamin E in

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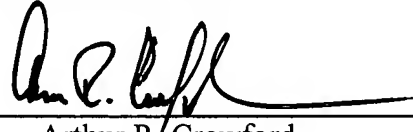
independent claims 1, 4, 5 and 6 of the cited document. Applicants' claims as above amended exclude the presence of vitamin E hence this rejection is no longer pertinent.

For the above reasons it is respectfully submitted that the claims of this application define subject matter that is both novel and inventive. Reconsideration and allowance are solicited. Should the examiner require further information, please contact the undersigned.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By: \_\_\_\_\_



Arthur R. Crawford  
Reg. No. 25,327

ARC:eaw  
901 North Glebe Road, 11th Floor  
Arlington, VA 22203-1808  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100